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First Named Inventor	Ge Li
Art Unit	3624
Examiner Name	Not Yet Assigned
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ENCLOSURES (*Check all that apply*)

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Date	November 17, 2006	Reg. No.	50,389

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PATENT
Attorney Docket No. EMT-001
(120418/156868)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE:
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

APPLICANTS:	Li *et al.*		
APPL. NO.:	09/664,226	ART UNIT:	3624
FILING DATE:	September 18, 2000	EXAMINER:	Colbert, Ella
TITLE:	Auction Management		

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REPLY BRIEF

STATUS OF CLAIMS

The application as filed contained 53 claims, and in an amendment filed on March 22, 2004, Appellants cancelled claim 53. Claims 1–52 remain pending, have been rejected, and are the subject of this appeal.

GROUNDS FOR REJECTION TO BE REVIEWED ON APPEAL

This reply brief is submitted pursuant to 37 C.F.R. § 41.41 in reply to the Examiner's Answer of September 19, 2006 (the "Answer"). In particular, this brief addresses the following points raised by the Examiner against the patentability of Appellants' claims:

1. The allegation that claims 1 and 27 are unpatentable under 35 U.S.C. § 112 for lack of antecedent basis and agreement; and

2. The allegation that *Shkedy* anticipates pending independent claims 1 and 27.

For the reasons that follow, we respectfully submit that claims 1 and 27 are patentable under 35 U.S.C. § 112 and over the *Shkedy* reference, which fails to anticipate claims 1 and 27 or the claims that depend therefrom.

ARGUMENT

A. Claims 1 and 27 Satisfy the Requirements of 35 U.S.C. § 112

The Answer repeats the rejection that claims 1 and 27, which each recite a "set of suppliers," have insufficient antecedent basis for the limitations "subset of suppliers," "selected suppliers," and "selected subset of suppliers," and that the claims throughout lack agreement with respect to the limitations "selected suppliers" and "selected supplier."

Although the Answer states that "Appellants are misinterpreting the Examiner's rejection," the only explanation in the Answer is that: (1) "any selected 'set' will not inherently include a number of 'subsets,'" and (2) the Appellants' do not have "selected suppliers" or "selected supplier" in any of the other claim limitations of claim 1 or claim 27.

First, the Answer proffers definitions for the terms "set" and "subset," and an exemplary "set of dishes" in support of the rejection. Although those definitions are unsupported and are not proper evidence, they still support Applicants' position.

If, as the Answer argues, a "set" is "two or more things," and a "subset" is "a set each of whose elements is an element of an inclusive set," then a set of two items will inherently have four subsets: the first item by itself, the second item by itself, the first and second item together, and the empty set (i.e., no items). Some of these subsets have a single element, while other subsets have plural elements. The same is true of the "set of dishes," which would include a subset of one dinner plate, a subset of two dinner plates, a subset of a dinner plate and a cup, etc.

Similarly, claims 1 and 27 each recite "a set of suppliers" that inherently includes one or more subsets. When claims 1 and 27 subsequently refer to each supplier in the set, they explicitly recite "each supplier." Claims 1 and 27 subsequently recite a step to "select a subset of suppliers," and then refer to the subset that has been selected as "the selected suppliers" and,

when referring to each supplier of that selected subset, "each of said selected subset of suppliers" (emphasis added). Therefore, claims 1 and 27 provide proper and sufficient antecedent basis for all of the identified limitations.

Similarly, when an element in the pending claims recites a selected subset having a single supplier, it explicitly recites a "selected supplier," and when it recites a selected subset having multiple suppliers, it explicitly recites "selected suppliers." There is no lack of agreement among the claims.

B. Shkedy Fails to Teach an Optimal Award Schedule Allowing Multiple Sellers to Satisfy a Buyer's Requisition

Applicants' Appeal Brief argued that the *Shkedy* system cannot create an "optimal award schedule" that allows multiple sellers to satisfy a buyer's requisition in an optimal fashion because *Shkedy* teaches that a single buyer always wins the entire award. In response, the Answer states that it is "interpreted that the selecting suppliers and an optimal award schedule for partial satisfaction of a requisition utilizing the suppliers is in col. 7, lines 27-67. *Shkedy* discusses sellers (plurality of suppliers) in col. 7, ln. 53-55 and partial satisfaction of a requisition utilizing the suppliers in col. 7, ln. 32-41."

The discussion in *Shkedy* at col. 7, ln. 27-67, including the discussion at ln. 32-41, clearly refers to transactions with a single seller, i.e., "a major supplier" and "an office supply company." The mentions of "sellers" at ln. 54, 62, and 67 do not teach that multiple sellers may satisfy a buyer's requisition, but merely indicate that the single seller is selected from a pool of multiple sellers that, e.g., are each authenticated by a certificate authority. *Shkedy*'s explicit teaching that a single seller does business with a pool of buyers teaches away from the

Examiner's "interpretation" of multiple sellers satisfying a requisition.[1] The Examiner is wrong or speculating impermissibly.

The Answer also claims that *Shkedy* teaches the creation of an optimal award schedule that is optimal with respect to both price and non-price criteria, citing col. 2, ln. 10-34 of *Shkedy* for support. However, the discussion at col. 2, ln. 10-34 has nothing to do with the determination of an optimal award schedule. As discussed in the Appeal Brief, the "optimal award schedule" allocates the buyer's requisition among a plurality of sellers. The Answer omits the introductory discussion of col. 2, ln. 5-9 which describes the prior art teaching the binding of a single buyer and a single seller from a group of suppliers searching a list of conditional purchase offers.

Similarly, the discussion at col. 2, ln. 10-34 teaches a single seller, i.e., from a group of sellers, then Priceline.com, and then an unnamed "manufacturer," satisfying a prospective buyer's requisition. None of these examples teaches the allocation of a buyer's requisition among a plurality of sellers that is in any way optimal with respect to non-price terms. The Federal Circuit has repeatedly held that the relevance of a reference cannot be predicated on "mere conjecture."[2]

Lastly, the Answer faults the Appeal Brief for focusing on the elements explicitly recited by the pending claims that are absent from the *Shkedy* reference, as those terms have been defined and used in the pending patent application. The pending rejections and the Answer allege that *Shkedy* anticipates pending independent claims 1 and 27 under 35 U.S.C. § 102(b). If this is the case, then it is the Office's burden to demonstrate the presence of all of the elements of

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[1] *Shkedy*. at, e.g., col. 3, ln. 55-57; col. 3, ln. 9-11; col. 6, ln. 29-30.
[2] *In re Robinson W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851, 105 S.Ct. 172 (1984); *Continental Can Co. v. Monsanto Co.*, 948 F.2d 1264, 1268, 20 USPQ2d 1746, 1749 (Fed. Cir. 1991).

those claims in the *Shkedy* reference.[3] If it cannot do so, then Applicants are entitled to the allowance of the pending claims: If *Shkedy* does not anticipate independent claims 1 and 27, then claims 1 and 27 and the remaining claims that depend therefrom are allowable as well.[4]

[3] *In re Boe and Duke*, 184 USPQ 38, 40 (CCPA 1974).
[4] Neither the pending rejections nor the Answer claim that *Carlton-Foss* anticipates or renders obvious independent claims 1 and 27.

CONCLUSION

For all of the foregoing reasons, we submit that the Examiner's rejections of claims 1–52 were erroneous, and reversal thereof is respectfully requested.

Respectfully submitted,

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